LIBRARY
SUPREME COURT, U. S.

No. 454

FILED
OCT 2 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

CHARLES WILLIAM EATON and SAMMY LEE EATON,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' REPLY TO THE GOVERNMENT'S BRIEF IN OPPOSITION.

JULIUS LUCIUS ECHELES
GERALD M. WERKSMAN
FREDERICK F. COHN
30 North LaSalle Street
Chicago, Illinois 60602
Attorneys for Petitioners

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 454

CHARLES WILLIAM EATON and SAMMY LEE EATON,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITIONERS' REPLY TO THE GOVERNMENT'S BRIEF IN OPPOSITION.

Although differing in its conclusion the government's brief in opposition to the granting of certiorari does not seriously challenge the petitioners' claim that they did not receive a fair trial because of the misconduct of the prosecutor. Reliance is placed on the plain error rule; and one of the most egregious abuse of cross-examination—asking petitioner Charles Eaton about his own reputation—is characterized as "An isolated instance of questionable zeal . . ." (Gov. Br. 5).

The petitioners' other claim of prejudice—that the prosecutor abused his right to cross-examine by testifying

without opening himself to cross-examination—has not even been answered by the government. Clearly, the prosecutor had an absolute duty to put in as rebuttal evidence testimony to support the damaging inferences and prejudicial innuendos with which he loaded his questions. Six areas important to the defendants' case were touched upon in this improper manner (Pet. 20). Yet the government says nothing of this in its brief.

The government would leave this court with the impression that the evidence against the petitioners was overwhelming. Not so. The witness Pettygo is characterized as "... reluctant to aid the prosecution ..." (Gov. Br. 4). But Pettygo was *not* a reluctant government witness. He was a witness for the petitioners who directly contradicted the testimony of the government's chief witness, M. C. McCarver. In addition, five disinterested witnesses testified to McCarver's poor reputation for truth and veracity. And the defendant Charles Eaton took the stand and denied crucial portions of McCarver's story. How, then, can the government suggest that the obviously and admittedly improper tactics of the prosecutor do not call for invocation of the plain error rule?

Wherefore, petitioners pray that their Petition be granted.

Respectfully submitted,

JULIUS LUCIUS ECHELES
GERALD M. WERKSMAN
FREDERICK F. COHN
Attorneys for Petitioners